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*Attorneys for RD Management LLC*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
In re:	:	Chapter 11
	:	
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	:	Case No. 18-23538 (RDD)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
	:	
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**OBJECTION TO NOTICE OF CURE AMOUNT**

RD Management LLC, as agent for FB Billerica Realty Investors LLC (together, “RD Management”), by and through its undersigned attorneys, hereby objects to the *Notice of Cure*

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816).

*Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Global Sale Transaction* [Dkt. No. 1731] (the “Cure Notice”) relating to that certain unexpired lease (the “Lease”) between FB Billerica Realty Investors LLC, as lessor, and Kmart Corporation (the “Kmart”), as tenant, for the premises currently known as Store Number 3288 located at 484 Boston Road, Billerica, MA 01821 (the “Premises”). In support thereof, RD Management respectfully states as follows:

### **OBJECTION**

1. On October 15, 2018 (the “Petition Date”), Sears Holdings Corporation, Kmart and certain of their affiliates (collectively, the “Debtors”) filed their respective voluntary petitions for reorganization pursuant to Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

2. On January 18, 2019, the Debtors filed the Cure Notice, setting forth, *inter alia*, the non-residential real property leases which may be subject to potential assumption and assignment.

3. As set forth in the Cure Notice, the Debtors may assume and assign that certain Lease relating to the Premises:

Store Number	Obligor	Counter Party Name	Contract Title	Contract Expiration Date	Contract Number	Cure Amount
3288	KMART Corporation	R D Management	Master Lease	8/31/2020	K3288-A	\$ 10,972

4. As of the date hereof, Kmart is in default under the terms of the Lease; the amounts currently owing consist of common area maintenance expenses and real estate taxes, in an amount not less than \$233,214.99. Such amounts are comprised of (i) past due billings for common area maintenance totaling \$53,324.95 (reflective of certain credits), and (ii) current billings for real

estate taxes totaling \$179,890.04. Annexed as Exhibit A is an itemization of these amounts through the date hereof.

### **OBJECTION**

5. As a condition to the assumption and assignment of the Lease, the Debtors are required to cure existing defaults pursuant to section 365 of the Bankruptcy Code, which provides in relevant part that “[i]f there has been a default in the executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee . . . cures, or provides adequate assurance that the trustee will promptly cure, such default . . . .” 11 U.S.C. § 365(b)(1)(A).

6. As set forth above, the Cure Notice understates the Debtors’ cure obligation in relation to the amount actually owed under the Lease. Thus, RD Management objects to assumption of the Lease unless and until the cure amount is increased to \$233,214.99.<sup>2</sup>

7. Further, Kmart is responsible for year-end adjustments to items such as common area maintenance, taxes and other expenses that are paid over the course of a year on an estimated basis. Generally the year-end adjustment, or true-up, of these categories does not take place until several months after the close of the RD Management’s fiscal year. Since section 365(b) only requires debtors to cure defaults under their leases, and since there can be no default for failure to pay an amount that has not as yet been billed, unpaid year-end adjustments (and those adjustments that may currently be accruing) are not a part of the cure obligation of the Debtors. Accordingly, RD Management requests that language be inserted into any proposed order governing the assumption and assignment of the Lease to provide that the proposed assignee shall be responsible

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<sup>2</sup> RD Management reserves the right to amend and/or supplement this objection to reflect such additional amounts or to account for any additional adjustments that have not yet been billed or have not yet become due under the Lease through the date of the closing on any assumption and assignment of the Lease.

for all unpaid year-end adjustments, whether accruing prior to or after the effective date of assumption of the Lease, when such charges become due in accordance with the terms of the Lease.

WHEREFORE, RD Management respectfully requests that the Court enter an order (i) establishing that the cure amount for Lease is \$233,214.99; (ii) establishing that any proposed assignee of the Lease shall be responsible for all unpaid year-end adjustments when such charges become due in accordance with the terms of the Lease; and (iii) granting such other and further relief as is just and proper under the circumstances.

Dated: New York, New York  
January 25, 2019

**THOMPSON & KNIGHT LLP**

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**CERTIFICATE OF SERVICE**

Michael V. Blumenthal certifies that he caused to be served a true and correct copy of the attached **Objection to Notice of Cure Amount (Store No. 3288)** via transmission of Notice of Electronic Filing generated by CM/ECF on all parties of record, and on parties listed below as indicated.

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## **SERVICE LIST**

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